IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No.19192 of 2007

Between:
M.Murali

….. PETITIONER

AND
Vijayawada Municipal Corporation,
Rep.by its Municipal Commissioner,
Vijayawada, Krishna District and 4 others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.19192 of 2007

ORDER:

This writ petition is filed by the petitioner, seeking Writ of Mandamum, declaring the action of the 1st respondent in cancelling the contract granted in his favour for execution of the work and order confiscation of security deposits and the part payments due in respect of the work executed by the petitioner under the impugned order dated 06.08.2007, as illegal, arbitrary, highhanded, contrary to the agreement and accordingly, sought to set aside the same, and to declare that the 1st respondent cannot cancel the work on the ground of delay, since the alleged delay was caused due to non-release of part payments by the 1st respondent.

2. It is stated that the 1st respondent corporation invited tenders for the construction of 1000 KL ELSR (Water Tank) at IGMC Stadium, Vijayawada, Krishna District. The petitioner was awarded with the said work being the successful tenderer. The acceptance of the petitioner's tender was communicated on 16.09.2006. Pursuant to which, the petitioner was obligated to execute the agreement for completion of the work entrusted to him.

3. According to the petitioner, he has completed 15% of the work even before the agreement was entered into in the month of April, 2007. Further, as per the terms of the agreement, the petitioner is entitled for periodical payments for the work executed by him based on the actual measurements. The petitioner submitted bill for part payments of the work executed by him, which was already measured by the officials of

the 1st respondent Corporation. But, however, no payments have been made, therefore, the petitioner made a representation on 04.08.2007, requesting the 1st respondent to make part payments for the works already executed by the petitioner. The 1st respondent, instead of paying the bill, has delayed the payment on one pretext or other and further insisted for completion of the work. In view of the non-payment of the bills already submitted by the petitioner, the petitioner was not able to proceed with the execution of the further work.

4. It is further stated that as per the conditions of the agreement, if there is any dispute between the contractor and the corporation, it has to be referred to the Engineer-in-Chief who has to adjudicate and communicate the result within a period of 30 days, and on the decision of the Engineer-in-Chief, if the contractor is not satisfied, the contractor can file an appeal before the 1st respondent Corporation. Till date, no such reference or communication was received by the petitioner from the Engineer-in-Chief with reference to the non-payment of bills for part work. Since the part payments are delayed, the petitioner made a representation again to the 1st respondent, reiterating the request. While so, according to the petitioner, he was served with the impugned order dated 06.08.2007, canceling the contract, on the ground that the petitioner did not complete the work as per the schedule.

5. Further, it is submitted that the 1st respondent invited fresh tenders for the same work through the tender notification vide 'e' Procurement Notice No.RC.EE3/43901/2007, dated 19.08.2007. In view of that, the petitioner made a representation on 06.09.2007 to re-consider the decision taken under the impugned proceedings. But, there was no response.

6. It is also stated that as per G.O.Ms.No.23, Irrigation and Command Area Development (PW.COD) Department, dated

05.03.1999, the 1st respondent has to refer the matter to the District Level Committee headed by the District Collector in case of any disputes between the parties. The 1st respondent even did not refer the said matter to the District Level Committee before passing the impugned order. Since the last date for receipt of the fresh tenders is on 11.09.2007, the petitioner has come up with the present writ petition, seeking stay of all further proceedings, pending disposal of the writ petition.

7. The learned counsel for the petitioner contended that since there is a dispute raised by the petitioner as to the non-payment of the bills with reference to the work completed, the 1st respondent ought not to have cancelled the contract, and in fact, it is contended that though a representation was made before the Engineer-in-Chief, he did not decide the issue. Alternatively, the learned counsel contended that the Engineer-in-Chief is an Officer subordinate to the Commissioner, who passed the impugned order, therefore, he may not be in a position to adjudicate upon the issue against the Commissioner, therefore, no useful purpose would be served, even though under the terms of the agreement, the dispute is to be referred to the Engineer-in-Chief for adjudication who is obligated to decide the issue within 30 days, and further, though there is a provision of appeal on the decision of the Engineer-in-Chief to the 1st respondent Corporation, the said remedy of appeal may not be effective, therefore, sought for appropriate orders.

8. The learned counsel appearing for the Corporation, on the other hand, contended that the issue relates to the contractual terms and when the petitioner did not adhere to the terms of the agreement, the Commissioner was constrained to cancel the contract that was entered into with the petitioner. The learned counsel also brought to the notice of this Court from the material papers filed by the petitioner that even

after the cancellation of agreement, a representation was made on 01.09.2007 stipulating that if payment is made with reference to the part work executed, the petitioner is ready and willing to proceed with the execution of the work, which clearly shows that the petitioner has committed default not only in delaying the work and also in not proceeding with the execution of the work and also expressing his intention not to proceed with the work, therefore, sought for dismissal of the writ petition.

9. Admittedly, the disputes relate to the terms of the contract entered into between the petitioner and the 1st respondent Corporation. The Corporation entrusted the execution of the work relating to the 1000 KL water tank. Various stipulations were incorporated under the agreement of contract. The petitioner himself admits that there was a delay in execution of the agreement after communication of the acceptance of the tender. The contention of the petitioner is that in view of the non-payment of the bill for the part work executed by the petitioner, he was not able to proceed with the further work, while the contention of the respondent is that the respondent is not willing to execute the work and delaying it, demanding escalation of the rates, to which he is not entitled. On the premise that the petitioner was not showing interest in execution of the work, after issuing a show cause notice, dated 02.07.2007 and having received the representation of the petitioner, not having satisfied, passed the impugned order, cancelling the agreement of contract. Against the said cancellation, if the petitioner would like to raise a dispute under the terms of the agreement, he has got a remedy of seeking reference for adjudication of the dispute before the Engineer-in-Chief who is obligated to adjudicate upon the issue within a period of 30 days. Further, against the said decision, the petitioner has got a remedy of appeal to the Corporation. The petitioner did not avail the remedy that was available under terms of contract, but was come up with the present

writ petition after lapse of more than 30 days, within which, if approached, the Engineer-in-Chief is expected to resolve the dispute. In the light of the above, this Court is of the opinion that the issue in dispute could not be adjudicated upon as it revolves upon the contractual aspects.

10. Under the above circumstances, this Court declines to entertain the present writ petition. Accordingly, the Writ Petition is dismissed, at the admission stage. No order as to costs.

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S.ANANDA REDDY,J

Dated: 14.09.2007
Dsr